K & W Trucking Company, Inc. *and* **International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, State of Alaska, General Teamsters Local 959, Petitioner.** Case 19-RC-10566

10 August 1983

DECISION ON REVIEW AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND HUNTER

On 1 October 1982 the Regional Director for Region 19 issued a Decision and Direction of Election in the above-entitled proceeding in which he found that all striking hostler employees who had not abandoned interest in their jobs with the Employer, as well as all of the Employer's current hostler employees, were eligible to vote in the election. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer timely filed a request for review of the Regional Director's decision together with a supporting brief contending that the Regional Director made erroneous findings of fact and departed from Board precedent.

By telegraphic order dated 26 October 1982 the National Labor Relations Board granted the Employer's request for review. Thereafter, pursuant to the Board's procedures, the election was held on 26 October 1982, and the ballots were impounded pending the Board's decision on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire record in this case with respect to the issues under review and makes the following findings:

The Employer, a Minnesota corporation with places of business located in Anchorage and Fairbanks, Alaska, is engaged in the business of providing trucking services of general commodities between the lower 48 States and Alaska. In 1974, the Employer voluntarily recognized the Petitioner as the exclusive collective-bargaining representative of its hostler employees at its Anchorage and Fairbanks, Alaska, facilities, excluding all line drivers, repairmen, office clerical employees, guards and supervisors as defined in the Act. By its petition, the Petitioner is seeking the benefits of certification through a Board election. Since 26 October 1981 all of the Employer's hostler employees, with the exception of three replacement employees, have been on strike against the Employer.

Uncontroverted facts in the record show that, prior to 1981, hostler employees were primarily responsible for picking up and delivering freight within the commercial zones or 50-mile radii of Anchorage and Fairbanks, Alaska; distributing LTL (less than truckload) freight; picking up truckload freight from customers; interchanging freight with water carriers; and transferring freight with the rail operations. In July and October 1980, the Employer and the Petitioner met to negotiate a new collective-bargaining contract to replace the contract which had expired on 30 June 1980. During these meetings, the Employer stated that pursuant to various business considerations it wished to eliminate or minimize all hostler work at its Anchorage and Fairbanks, Alaska, facilities. In this connection, the Employer stated that the nature of its operation had changed into being substantially a full truckload (TL) rather than an LTL operation, and that the low volume of LTL work was inadequate to cover the cost of maintaining the LTL operation. The Employer also stated that it wished to have its line drivers, rather than the hostlers, load and unload within the commercial zones; load directly off water carriers in Anchorage; and load off the rail carrier in Fairbanks.

As found by the Regional Director, in early 1981, the Port of Anchorage closed its facilities to the Employer, resulting in the elimination of the hostlers' duties relating to moving freight from the port to the rail facility and delivering freight to the Employer's customers. The record shows that, during contract negotiations in May 1981, the Employer informed the Petitioner of its plans to implement the operational changes designed to eliminate the LTL work and to decrease the amount of hostler work in both Anchorage and Fairbanks. The elimination of the Employer's LTL work would virtually eliminate the need for hostler employees in Anchorage because the record shows that about 90 percent of hostler work in Anchorage involved LTL distribution. During the summer of 1981, line drivers began performing work within the Anchorage commercial zone, and the Employer began refusing to accept LTL freight at its origin in the lower 48 States. In addition, the Employer closed its LTL facilities in Chicago, Long Beach, and St. Paul in May, July, and November 1981, respectively. Further, the Employer began approaching other freight carriers in Anchorage and Fairbanks to perform its LTL work. Uncontroverted testimony shows that, prior to the strike, the Employer had reached agreements with carriers in Anchorage and Fairbanks to perform the LTL work and other hostler work. On 13 October 1981 the Employer notified the Petitioner of the action taken in the

subcontracting of the LTL work in Anchorage to another carrier, and that the change in operation would be effective on 1 November 1981. The Employer further informed the Petitioner that similar subcontracting arrangements had been made in Fairbanks and would be implemented following the subcontracting in Anchorage. On 14 October 1981 the Employer notified all hostler employees in its Anchorage facility that they were terminated as of 30 October 1981. On 26 October 1981 the Employer's hostler employees went on strike. As a result of the strike the Employer's Anchorage subcontractor refused to perform the LTL work, and the Employer decided to eliminate completely all LTL work. The Employer hired 10 replacement hostlers in order to perform the remaining LTL work which was still in the Employer's freight system at the time of the strike. The number of hostlers decreased gradually to the present number of three: two in Fairbanks and one in Anchorage. The record shows that the Employer's present operation consists entirely of TL work. Further, the Employer is in the process of transferring its Anchorage operations to a new terminal which does not have the capacity to handle LTL freight.

The Employer disputes the Regional Director's finding that the strike resulted in the reduction of unit jobs and, thus, all striking employees who have not abandoned interest in their jobs and all hostler employees who are currently working for the Employer were eligible to vote in the election. Rather, the Employer contends that, as a result of business decisions made prior to the commencement of the strike, the petitioned-for unit no longer exists and, thus, the petition should be dismissed. In the alternative, the Employer contends that the number of striking employees eligible to vote should be limited to the number of bargaining unit employees currently working for the Employer. We find merit in the Employer's contentions.

The Regional Director properly found that the strike was precipitated by the Employer's decision to change its method of operation resulting in the elimination of the hostler positions. In reliance on *Kable Printing Co.*, 238 NLRB 1092 (1978), the Regional Director stated that unreplaced economic strikers whose jobs have been eliminated for economic reasons are not eligible to vote if the elimination of their jobs was wholly predicated upon considerations unrelated to the strike. We agree. However, the Regional Director further stated that in order to find the striking hostlers to be ineligible to vote in the election, it is necessary to find that the strike will be unsuccessful. Rather than conditioning the hostlers' voting eligibility on the success, or lack thereof, of the Petitioner's strike, we are of the view that, under *Kable Printing Co., supra*, the hostlers' eligibility must be determined by examining the underlying cause of the elimination of their positions. Inasmuch as the record shows that the elimination of the hostler positions was predicated on valid economic considerations which were unrelated to the strike, we do not agree that all striking hostler employees are eligible to vote in the election. As set forth above, prior to the strike the Employer implemented its plans to eliminate permanently most of its hostler work. These plans included the closing of its LTL facilities, the reassignment of hostler work to line drivers, and the subcontracting of hostler work within the commercial zones.

Further, it appears that the Regional Director erred in finding that the Petitioner's strike activity resulted in a reduction in the number of union employees. It appears that the Regional Director's finding was based in large part on the fact that, while the Employer employed 15 hostlers before the strike, the Employer hired only 10 replacement hostlers after the strike commenced. However, the record shows that, even though there were 15 hostlers listed on the Employer's October 1981 seniority list, factors such as employee vacations and absences due to injuries resulted in there being less than 15 actively employed hostler employees at any one time. In any event, we are persuaded that the reduction in hostler positions was predicated upon economic considerations apart from the strike.

Therefore, as the record indicates that the Employer employed three hostler replacements at the date of the hearing, we find that those employees were eligible to vote in the election.[1] Furthermore, under Section 9(c)(3) of the Act, replaced economic strikers who are not entitled to reinstatement shall be eligible to vote in any election conducted within 12 months after the commencement of the strike. See *Wahl Clipper Corp.*, 195 NLRB 634 (1972). As noted above, the record shows that the Employer currently employs three hostler employees. As such, we conclude that the positions of only three striking hostlers were not eliminated by the Employer. Accordingly, we shall order that the ballots, if any, of the three most senior striking hostler employees also be opened and counted.

ORDER

It is hereby ordered that this case be, and it hereby is, remanded to the Regional Director for Region 19 and that the Regional Director open and count the ballots of the three hostler replacement

[1] Assuming they were employed as of the election date.

employees who were working for the Employer on the eligibility date and the date of the election and the ballots, if any, of the three most senior striking hostler employees, and take further appropriate action.